

FEB 15 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

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CARL A. EUBANKS,
Petitioner,

v.

TERRY O'BRIAN, WARDEN
Respondent.

)
) Civil Action No. 7:06cv00107
)

) MEMORANDUM OPINION
)

) By: Samuel G. Wilson
) United States District Judge

Petitioner Carl A. Eubanks, a federal inmate proceeding pro se, brings this action pursuant to 28 U.S.C. § 2241. Eubanks was convicted in the District Court of South Carolina of armed bank robbery, possession of a firearm by a convicted felon, and use of a firearm in the commission of a crime of violence. The court ultimately sentenced Eubanks to three concurrent life sentences followed by a period of supervised release. Eubanks now claims that the imposition of a term of supervised release following his life sentences was unconstitutional.

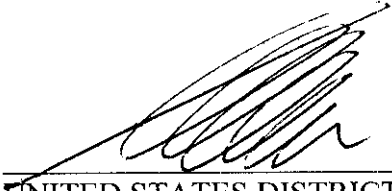
Ordinarily, a petition pursuant to 28 U.S.C. § 2255, not 28 U.S.C. § 2241, is the appropriate vehicle for challenging the imposition of a sentence,¹ unless a petition pursuant to 28 U.S.C. § 2255 is "inadequate and ineffective" for that purpose. In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000). A petition pursuant to § 2255 is "inadequate and ineffective" to challenge the imposition of a sentence only when 1) settled law established the legality of the conviction or sentence at the time imposed; 2) after the prisoner has completed his appeal and first § 2255 motion, a change in substantive law renders the conduct for which the prisoner was convicted no longer criminal; and 3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law made retroactively applicable to cases on collateral review. Id. Eubanks has

¹See U.S. v. Little, 392 F.3d 671, (4th Cir. 2004) ("[An] attack on the execution of [a] sentence and not a collateral attack on [a] conviction . . . [is] properly brought under 28 U.S.C.A. § 2241.").

"A habeas petition under § 2241 must, however, be filed in the district in which the prisoner is confined." In re Jones, 226 F.3d at 332 (citing 28 U.S.C. § 2241(a)).

not alleged that a change in the law rendered the behavior for which he was convicted legal; therefore, relief under § 2255 is not “inadequate and ineffective,” and he may not resort to § 2241. Accordingly, the court dismisses Eubanks’ § 2241 petition.²

ENTER: This 16th day of February, 2006.


UNITED STATES DISTRICT JUDGE

²Moreover, Eubanks’ claim is meritless because the sentencing court was statutorily authorized to impose a period of supervised release. See 18 U.S.C. § 3583(a).